

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

ROGER C. FOUNTAIN,

Plaintiff,

vs.

**ED ENRIQUEZ,
D/B/A STATE FARM AGENT**

Defendant.

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CIVIL ACTION NO. 4:13-cv-322

DEFENDANT'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. Sections 1331, 1441(a), and 1446, Defendant Ed Enriquez d/b/a State Farm Agent ("Defendant") removes to this Court the action brought by Plaintiff Roger C. Fountain ("Plaintiff"). In support, Defendant states as follows:

I. BACKGROUND

1. On or about January 17, 2013, Plaintiff filed his Statement of Claim, Docket No. 32-SC-13-00024, against Defendant in the Small Claims Court, Precinct Three, Place Two, Collin County, Texas, 920 E. Park Boulevard, Suite 210, Plano, Texas 75074. In his January 17 Statement of Claim, Plaintiff alleged "Violations of the Texas state and National Do Not Call Registries, violations of the TCPA, and phone harassment."

2. Defendant was unable to ascertain whether Plaintiff was alleging a federal claim based on his January 17 Statement of Claim. To avoid a potentially improper removal Defendant attempted to correspond with Plaintiff regarding his claims. When Plaintiff failed to response, Defendant filed his Special Exceptions requesting that the Court require Plaintiff to cure all pleading defects by specifically alleging the statute giving rise to his claims. Prior to the hearing on Defendant's Special Exception on June 3, Plaintiff amended his pleadings.

3. On or about June 3, 2013, Plaintiff filed his Amended Statement of Claim alleging “Violations of the Texas No Call List, violations of the Federal Do Not Call List/Registry/Guidelines, 47 U.S.C. § 227(c)(5), phone harassment, the Telephone Consumer Protection Act, 47 CFR, intentional infliction of emotional distress and Sec. 641200(e)(2)(vi), Sec. 641200(e)(2)(i), 47 U.S.C. Sect. 227 (c)(5) Sect. 227” Plaintiff seeks monetary relief, including damages and costs of court. This case became removable when Plaintiff filed his Amended Statement of Claim on June 3. At that time, Defendant was able to ascertain that Plaintiff was alleging a federal claim for the first time.

4. This Notice of Removal, together with all process, pleadings, and orders served on Defendant, or otherwise on file in the State Court action, are being filed in this Court within 30 days after receipt of Plaintiff’s Amended Statement of Claim, wherein Plaintiff alleges for the first time a federal cause of action. The removal is therefore timely under 28 U.S.C. § 1446(b).

5. Attached hereto as Exhibit A is all information required by Local Rule CV-81 of the United States District Court for the Eastern District of Texas and 28 U.S.C. § 1446(a).

6. A copy of this Notice of Removal is also being filed with the Clerk of the State Court in which the action was filed.

II. GROUNDS FOR REMOVAL

7. This is a civil action in which Plaintiff claims that Defendant violated federal statutes, specifically the Telephone Consumer Protection Act, 47 U.S.C. 227, *et. seq.* Accordingly, Plaintiff asserts a federal question under 28 U.S.C. § 1331, therefore, this case is removable under 28 U.S.C. § 1441(a).

8. This Court has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367(a), over all non-removable causes of action contained in Plaintiff’s Amended Statement of Claim because

such causes of action are so related to the removable claims that they form part of the same case or controversy. Alternatively, this Court has jurisdiction over any non-removable claims pursuant to 28 U.S.C. § 1441(c).

WHEREFORE, Defendant gives notice that the action *Roger C. Fountain v. Ed Enriquez d/b/a State Farm Agent*, Docket No. 32-SC-13-00024, pending in the Small Claims Court, Precinct Three, Place Two, Collin County, Texas is removed to this Court.

Respectfully submitted,

**OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.**

/s Ryan M. Miller
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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing was forwarded to Plaintiff, *pro se*, on June 12, 2013, via certified mail return receipt requested and U.S. First Class mail:

Roger C. Fountain
P.O. Box 868135
Plano, Texas 75086

/s Ryan M. Miller
Ryan M. Miller